

Gannett Rochester Newspapers, a Division of Gannett Co., Inc. and Newspaper Guild of Rochester, Local 17 and Rochester Newspaper Pressmen's Union No. 36. Cases 3-CA-16218 and 3-CA-16403

June 28, 1996

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND FOX

On September 29, 1995, a three-member panel of the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding¹ finding, inter alia, that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally promulgating and implementing a policy, announced in a memorandum on March 8, 1991, regarding compensation for worktime lost due to weather conditions, and applying this policy to the bargaining unit represented by Rochester Newspaper Pressmen's Union No. 36, without giving the Union prior notice and an opportunity to bargain.

On November 9, 1995, the Respondent filed a Petition to Revise Amended Remedy, Order, and Notice to Employees. The Respondent also filed a certification in support of the petition. Neither the Rochester Newspaper Pressmen's Union No. 36, nor the General Counsel has filed a response to the petition.²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The certification states that the Respondent withdrew recognition from the Pressmen's Union No. 36 on September 23, 1993, based on objective evidence that a majority of the employees in the bargaining unit no longer wished to be represented by that Union.³ The certification states that the Union did not oppose the withdrawal of recognition and that since September 23, 1993, the pressroom employees have not been represented by any union.

The Respondent's petition asks that the following be deleted from the Decision and Order: (1) the language in the amended remedy stating that the Board would order the Respondent to bargain with the Pressmen's Union regarding the above-described policy; (2) paragraph 1(b) of the Order which requires that the Re-

spondent cease and desist from promulgating and implementing a policy regarding compensation for worktime lost due to weather conditions for the unit represented by the Pressmen's Union, without giving the Union prior notice and an opportunity to bargain; (3) paragraph 2(b) of the Order requiring that the Respondent rescind the policy as to the unit represented by the Pressmen's Union; and (4) paragraph 2(d) of the Order requiring the Respondent, on request, to bargain with the Pressmen's Union regarding the policy. Finally, the Respondent requests that the language in the notice which corresponds to the Order's paragraphs 1(b) and 2(b) and (d) be deleted.

As neither the Charging Party, Rochester Newspaper Pressmen's Union No. 36, nor the General Counsel has filed a response to the Respondent's petition and certification, we accept as true the Respondent's assertion, in the certification, that it withdrew recognition from the Pressmen's Union on September 23, 1993, and that that Union did not oppose the withdrawal of recognition.

As the Union no longer represents the bargaining unit, we find that some modification of the remedial requirements of the Order is warranted. First, paragraph 1(b) requires the Respondent to cease and desist from unilaterally promulgating and implementing a policy regarding compensation for worktime lost due to weather conditions for the bargaining unit represented by Rochester Newspaper Pressmen's Union No. 36 without giving that Union prior notice and an opportunity to bargain. Further, paragraph 2(d) of the Order requires the Respondent to bargain with that Union. In the circumstances now existing, these provisions in effect require the Respondent to cease and desist from failing to bargain with a labor organization that no longer represents the bargaining unit employees, and affirmatively to bargain with that labor organization. We therefore find that it does not effectuate the policies of the Act to continue to require the Respondent to bargain with the Rochester Newspaper Pressmen's Union No. 36. Nevertheless, we have a responsibility to vindicate the public's interests by discouraging and prohibiting unfair labor practices.⁴ As noted above, we found that the Respondent violated Section 8(a)(5) and (1) by unilaterally promulgating and implementing the policy in issue without bargaining with the bargaining unit's representative. Accordingly, we shall modify our Order by deleting specific references to the Pressmen's Union and order the Respondent to bargain regarding compensation for worktime lost due to weather conditions with any labor organization that is the exclusive Section 9 representative of the bargaining unit employees.

As the employees formerly represented by the Rochester Newspaper Pressmen's Union No. 36 are no

¹ 319 NLRB 215.

² In the certification in support of the petition, by William A. Behan, director of labor relations and labor counsel for the Respondent, he states that he has "personally discussed this matter with a representative of Region 3 and [has] been advised that Region 3 has no objection to this petition."

³ Attached to the certification is a letter from the Respondent to Dennis Ponczkowski, president of the Rochester Pressmen's Union No. 36, dated September 23, 1993, withdrawing recognition from the Union "as a representative of the employees in the bargaining unit, effective immediately."

⁴ *Missouri Portland Cement Co.*, 291 NLRB 1043, 1044 (1988).

longer represented by a labor organization, the Respondent is now free to institute unilaterally changes in terms and conditions of employment for these employees. We will therefore remove the provision of the Order requiring the Respondent to rescind the policy. Nevertheless, the Respondent unilaterally promulgated and implemented the policy without giving the Pressmen's Union prior notice and an opportunity to bargain at a time when that Union was the exclusive collective-bargaining representative of the bargaining unit employees. Therefore, it is appropriate that the Respondent be required to give written notification to the former unit employees that this action was unlawful. Further, we will order the Respondent to restore personal days to and make whole the former unit employees for losses suffered, pursuant to that policy, through September 23, 1993—the date the Respondent lawfully withdrew recognition from the Pressmen's Union. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Accordingly, we deny the Respondent's request to delete paragraph 1(b) of the Order of September 29, 1995, and the corresponding paragraph in the notice. We shall, however, modify that Order and notice and issue the Order set forth below in lieu of the one previously entered in this proceeding.⁵

ORDER

The National Labor Relations Board orders that the Respondent, Gannett Rochester Newspapers, a Division of Gannett Co., Inc., Rochester, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Newspaper Guild of Rochester, Local 17, by failing and refusing to furnish it with requested information which is relevant and necessary to the performance by the Guild of its obligation as exclusive collective-bargaining representative of the appropriate bargaining unit.

(b) Unilaterally promulgating and implementing a policy regarding compensation for worktime lost due to weather conditions without giving prior notice and an opportunity to bargain to any union that is the exclusive collective-bargaining representative of the Respondent's employees in the bargaining unit which was represented by the Rochester Newspaper Pressmen's Union No. 36, on March 8, 1991.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Newspaper Guild of Rochester, Local 17, as the exclusive representative of all employees in the appropriate unit with the following information requested by the Guild: all written policies governing snow days and weather emergencies, including all policies that existed before March 3, 1991, and all those created subsequent to that date, covering all of the departments in the Respondent's facility.

(b) Give written notification to former members of the bargaining unit which was represented by Rochester Newspaper Pressmen's Union No. 36, that its promulgating and implementing the policy announced in the March 8, 1991 memorandum (regarding compensation for worktime lost due to weather conditions), without giving prior notice and an opportunity to bargain to that Union, was unlawful.

(c) Restore to former members of the bargaining unit which was represented by the Pressmen's Union any personal days taken, through September 23, 1993 (the date the Respondent lawfully withdrew recognition from the Pressmen's Union), to avoid a loss of compensation caused by the unlawful policy announced in the March 8, 1991 memorandum, and also make whole those former unit members who did not take personal days, and who thereby suffered a loss of compensation, in the manner set forth in the Board's Supplemental Decision.

(d) On request, bargain regarding the policy announced in the Respondent's memorandum of March 8, 1991, with any union that is the exclusive collective-bargaining representative of its employees in the unit represented, on March 8, 1991, by Rochester Newspaper Pressmen's Union No. 36.

(e) Within 14 days after service by the Region, post at its facility in Rochester, New York, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Further, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all

⁵ We shall also modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

former employess employed by the Respondent in the bargaining unit at any time since April 1, 1991, for members of the Newspaper Guild of Rochester, Local 17 and since July 1, 1991, for former members of the Rochester Newspaper Pressmen's Union No. 36. Finally, in the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain in good faith with the Newspaper Guild of Rochester, Local 17, by failing or refusing to furnish it with requested information which is relevant and necessary to the performance of its obligations as the bargaining representative of the appropriate bargaining unit.

WE unlawfully, in regard to the former members of the bargaining unit represented by Rochester Newspaper Pressmen's Union No. 36, promulgated and implemented the policy announced in the March 8, 1991 memorandum (regarding compensation for worktime lost due to weather conditions) without giving prior notice and an opportunity to bargain to that Union.

WE WILL NOT fail or refuse to bargain with any union that is the exclusive collective-bargaining representative of our employees, in the bargaining unit represented by the Rochester Newspaper Pressmen's Union No. 36 on March 8, 1991, by unilaterally promulgating and implementing a policy regarding compensation for worktime lost due to weather conditions without giving prior notice and an opportunity to bargain to such union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Newspaper Guild of Rochester, Local 17, as the exclusive bargaining representative of our employees in the appropriate unit, with the following information which the Guild requested: all written policies governing snow days and weather emergencies, including all policies that existed before March 3, 1991, and all those created subsequent to that date, covering all of the departments in our Rochester, New York facility.

WE WILL restore to former members of the bargaining unit which was represented by the Pressmen's Union any personal days taken, through September 23, 1993 (the date the Respondent lawfully withdrew recognition from the Pressmen's Union), to avoid a loss of compensation caused by the unlawful policy announced in the March 8, 1991 memorandum, and also make whole those former unit members who did not take personal days, and who thereby suffered a loss of compensation.

WE WILL bargain, regarding the policy announced in the Respondent's memorandum of March 8, 1991, upon request, with any union that is the exclusive collective-bargaining representative of Respondent's employees in the bargaining unit represented by the Rochester Newspaper Pressmen's Union No. 36 on March 8, 1991.

GANNETT ROCHESTER NEWSPAPERS, A
DIVISION OF GANNETT CO., INC.